BAIL SLIP

The Second Appellant/ Accused No.2 namely Thangappan S/o Chinnathambi, was directed to be released on bail in and by the order of this court dated 21.1.1999 and made in Crl.M.P.No.145/99 in Crl.Appeal No.778/1996.

First Appellant / 1st Accused namely babu S/o Anthony, was directed to be released on bail in and by the order of this court dated 08.10.2001 and made in Crl.M.P.No.6595/01 in CA.No.778/96

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR

and

THE HONOURABLE MR JUSTICE A.KULASEKARAN

Criminal Appeal No. 778 of 1996

1. Babu

2. Thangappan ... Appellants

Vs

State by Inspector of Police,
Secretariat Colony Police
Station, Madras.
(Cr.No.1687 of 1995) ... Respondent

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Prayer: Appeal against the judgment passed by the learned Principal Sessions Judge, Madras, in S.C.No.217 of 1996 dated 5.9.1996.

For Appellant : Mr.V.Gopinath, S.C.
for Mr.Arasu Ganesan

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For Respondents : Mr.V.M.R.Rajendran
Addl. Public Prosecutor.

J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR,. J)

The appellants, two in number, challenge their conviction and sentence. Two other persons were also tried along with them, but they were acquitted by the learned trial Judge. The appellants and the other two accused, who were acquitted, were charged under Sections 341 and 302 read with 34 I.P.C. While the appellants, who were arrayed as A-1 and A-2, were convicted under Section 341 I.P.C., for which, though no separate sentence was imposed, on being convicted under Section 302 read with 34 I.P.C., were each sentenced to imprisonment for life, while the other two accused were acquitted under the said charges.

2. The case of the prosecution is as follows:-

P.Ws.1 to 3 and the deceased Raju are friends. The appellants and A-3 and A-4, who were acquitted, are also friends. At about 8.30 p.m. on 23.10.95, P.W.1 and the deceased along with P.W.2 were proceeding towards Sanniyasipuram from Lockma Nagar. When they were nearing a tea stall, the first appellant, who was standing there, questioned them as to why they are proceeding that way as they were asked not to go that side. Along with the first appellant, the second appellant and the other two accused were also present. The deceased, using abusive language, questioned the first appellant whether the road belongs to his father. The first appellant slapped the deceased. P.W.1 called the deceased and told him that they should leave the place. But the deceased refused to leave the place. The first appellant, taking an aruval, which he had in his hand, cut him on the neck. The second appellant cut him on the right left. The other two accused, who were acquitted, also stabbed him. P.Ws.1 and 2 saw the occurrence and ran away from the place, out of fear. A crowd gathered and the appellants and the other two accused ran away from the place. P.Ws.1 and 4 placed the deceased Raju in an auto and took him to Kilpauk Medical College Hospital, where he was produced before P.W.6, the Casualty Medical Officer, who, on examining Raju, found him dead. The death intimation is Ex.P.4. P.W.1 left the hospital and proceeded to Secretariat Colony police station and gave a complaint to Vasudevan, Sub-Inspector, who is since dead, at 9.30 p.m. The said complaint is Ex.P.1. A case in Crime No.1687 of 1995 was registered against the appellants and two others and the printed first information report is Ex.P.20. Investigation in the crime was taken up

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by P.W.13, the Inspector of Police, Law and Order, of G-5 Secretariat police station at about 9.30 p.m.

3. P.W.13, on taking up investigation in the crime, proceeded to the scene of occurrence and reached it at 10.30 p.m., where, an observation mahazar, Ex.P.6 and a rough sketch, Ex.P.21, were prepared. The photographer, P.W.11, took photographs of the scene of occurrence. He seized M.Os.5 and 6, in the presence of witnesses, under a mahazar, Ex.P.7. Between 1.00 a.m. and 3.30 a.m. on the night of 23/24.10.95, the inquest over the body of Raju was conducted by preparing the inquest report, Ex.P.22, during which, P.Ws.1, 2 and 4 were questioned and their statements were recorded.

4. On receipt of a requisition, P.W.5, the Police Surgeon attached to Government Royapettah Hospital and Additional Professor of Forensic Medicine, Kilpauk Medical College Hospital, Madras, conducted autopsy on the dead body of Raju and found the following injuries:-

1. 38 cms. long, oblique scratch abrasion on the back extending from the inner aspect of shoulder blads to the middle of the left back opposite to T12. Tailing is seen in the lower end opposite to T12. Upper end is gaping to 0.3 cm.s exposing the subcutaneous tissue.

2. 12 cms. long oblique scratch abrasion seen over the right shoulder blade extending from its upper end to the lower end along its outer border.

3. 3 cms. long oblique scratch abrasion on the right side of middle of back opposite to L1.

4. 1 ½ x 1 cm. reddish abrasions on the middle of back on the right side opposite L2.

5. 2 scratch abrasions crisscrossing (x) measured 6 and 4 cms. On the middle of lower back on the right side opposite L5.

6. 8 cms. long oblique scratch abrasion on the outer aspect of middle of left arm.

7. 1 cm. long curved scratch abrasion on the inferior aspect of middle of right chin.

8. Oblique incised gaping wound 10 x 4 cms. x fascia - deep in front of the neck on the right side. The lower oblique end is situated 4 cms. above the inner end of right clavicle.

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The upper acute end is situated 7 cms. below the lobule of the right ear. Tailing of the wound seen for 4 cms. from the upper end. Margins of the wound are regular underlying platysma muscle is exposed. There is a 2 cms. penetrating injury seen in the lower end of the wound through which blood comes out. Probe passes into the thoracic cavities. The direction of the wound is obliquely downwards backwards and to the left. On dissection, the wound cuts through the fibres of the sterno mastoid and enters into the superior mediastinum producing a through and through stab wound in the superior vena cava. 1.5 cm. and a 1 cm. cut wound in the arch of the aorta in its upper border.

The doctor issued Ex.P.3, the post-mortem certificate, with his opinion that the deceased died on account of shock and haemorrhage due to the cut injury to Aorta and Superior Vena Cava.

5. P.W.13, continuing with his investigation, searched for the appellants, but they were found absconding. On 27.10.95 at about 10.00 a.m., on seeing the appellants at New Avadi Raod near Rajanaicken street, arrested them and brought to the police station. The first appellant gave a statement and Ex.P.23 is the admissible portion. The second appellant also gave a statement and the admissible portion is Ex.P.24. The police party was taken and the first appellant produced M.O.1, aruval, which was seized under a mahazar, Ex.P.12. The second appellant produced M.O.2, aruval, which was seized under a mahazar, Ex.P.13 and both the mahazars were attested by witnesses. The appellants were sent to Court for remand on the same day at about 4.00 p.m. On 31.10.95, the knives were shown to the doctor, who conducted autopsy and he was questioned, whose statement was recorded. The officer gave a requisition, Ex.P.16, to the Court for sending the material objects for analysis and after the examination of the photographer and others, the final report was filed against the appellants and the other two accused on 9.2.96.

6. The appellants were questioned under Section 313 Cr.P.C. on the incriminating circumstances. They denied all the incriminating circumstances and examined D.Ws.1 to 3. D.W.1, in his evidence, stated that P.W.3 was having illicit relationship with the mother of the deceased. D.W.2, in his evidence, stated that P.W.3 has pledged jewels and marked Exs.D.1 and D.2, the pledge receipts and D.W.3, in his evidence, stated that P.W.3 was having illicit relationship with the deceased mother.

7. The cause of death of Raju stands established through the evidence of the doctor, P.W.5 and according to him, the deceased died on account of the injuries to Aorta and Superior Vena Cava and

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that the injuries could have been caused with a sharp-edged weapon. He has further deposed that the lacerations could have been on account of his falling down on a rough surface. Therefore, on the medical evidence, we hold that Raju died on account of homicidal violence. The said fact is also not disputed by the appellants.

8. P.Ws.1 to 3 were examined to speak about the occurrence and according to them, on the date of incident, when the deceased and P.Ws.1 and 2 were proceeding towards Sanniyasipuram, they were accosted near a tea stall by the first appellant, who questioned them as to why they are passing by that side, to which the deceased replied by using filthy and abusive language. The first appellant slapped the deceased on account of that. P.W.1 wanted the deceased to leave that place and also requested the deceased that they should leave. But the deceased refused to go from that place. Thereafter, the first appellant took an aruval and cut the deceased followed by the second appellant. The complaint regarding the incident was given at the police station at 9.30 p.m. by P.W.1 after the injured Raju was taken to the hospital and was pronounced dead by the doctor. Therefore, it could be seen that immediately after the incident at 8.30 p.m., the complaint was lodged at the police station within an hour by P.W.1. It is not the case of the appellants that the complaint, Ex.P.1, was not given by P.W.1 at that time. In this background, the fact that in Ex.P.4, the death intimation, the name of P.W.1 is not found mentioned as the person, who produced the deceased before the doctor, will not be fatal to the prosecution. In the said death intimation, Ex.P.4, it is found mentioned that the deceased was brought dead to the casualty at about 9.00 p.m. from Lockma Nagar by Gowrava Pillai, a relative. Though Gowrava Pillai was not examined, it is possible that immediately after the incident, Gowrava Pillai, one of the relatives of the deceased, had come to the scene of occurrence, since the evidence of P.W.1 indicates that immediately after the incident, crowd gathered and therefore, we are of the view that Gowrava Pillai could have been one of the persons in the crowd and that he could have also accompanied P.Ws.1 and 4 to the hospital. It is not necessary for the medical officer to mention the names of all the persons, who brought the injured and Gowrava Pillai, being a relative of the deceased, the doctor could have mentioned his name in the death intimation, Ex.P.4. Therefore, we do not attach much importance to the argument of the learned counsel that since the name of P.W.1 is not found mentioned in the death intimation, Ex.P.4, the case of the prosecution is to be disbelieved. In this background, as we stated earlier, the appellants have not disputed that Ex.P.1 could not have been given by P.W.1. On going through the evidence of P.Ws.1 to 3, we are fully satisfied that they were witnesses to the occurrence and that they were also examined on the same night.

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9. The evidence of D.Ws.1 to 3 is of no use to the defence and all that emanates from the evidence of D.Ws.1 to 3 is that P.W.3 was having illicit relationship with the mother of the deceased. The said evidence of D.Ws.1 to 3 does not affect the prosecution version. We, therefore, do not attach much importance to the evidence of D.Ws.1 to 3 and accept the evidence of P.Ws.1 to 3. Once we accept the evidence of P.Ws.1 to 3, there can be no difficulty in arriving at a conclusion that the deceased was attacked by the appellants and that he died on account of the injuries suffered at the hands of the appellants.

10. The question that is to be decided by us is the nature of offence committed by the appellants. The evidence of the eye witnesses indicates that the deceased was attacked on non-vital parts and according to the doctor, who conducted autopsy, the deceased died on account of the injuries suffered to Aorta and Superior Vena Cava. On similar facts, the Supreme Court in GOKUL PARASHRAM PATIL v. STATE OF MAHARASHTRA (A.I.R. 1981 SC 1441), held that it will be too much to say that the appellant knew that the superior vena cava would be cut as a result of the wound and that even a medical man perhaps may not have been able to judge the location of the superior vena cava with any precision of that type and therefore, the fact that the vena cava was cut must be ascribed to a non-intentional and accidental circumstance. The Supreme Court, to arrive at that view, quoted with approval, its earlier judgment in HARJINDER SINGH v. DELHI ADMINISTRATION (A.I.R. 1968 SC 867) as well as a judgment rendered in LAXMAN KALU NIKALJE v. STATE OF MAHARASHTRA (A.I.R. 1968 SC 1390). In the former of the two cases quoted with approval by the Supreme Court, a stab injury was inflicted on the left thigh, which had cut the femoral artery and vessels and in the latter case, the damage was caused to the auxiliary artery and veins and in each of the two cases, it was held by the Supreme Court that the injury which was found to be sufficient in the ordinary course of nature to cause death has resulted from a blow with a sharp-edged weapon, but the same could not be said to have been intended that the only injury which could be regarded as intentional was the superficial wound resulting directly from the blow and the assailant could not, therefore, be found guilty under Section 302 I.P.C. and that he could only be convicted under Section 304 Part-II I.P.C.

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11. We, applying the above principles laid down by the Supreme Court to the facts of this case, which are similar to the one, which we have referred to in the judgment first cited supra, set aside the conviction of the appellants under Section 302 read with 34 I.P.C., but find them guilty under Section 304 Part-II I.P.C., for which each one of them is sentenced to seven years rigorous imprisonment. The appeal is dismissed with the above modification in conviction

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and sentence. It is reported that the appellants are on bail. They shall surrender to the bail bonds and the learned Sessions Judge shall also take steps to commit them to jail to serve the remaining period of sentence.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Sessions Judge, Madras.
2.The District Collector, Chennai.
3.The Director General of Police, Chennai.

4.The Superintendent, Central Prison, Chennai.
5.The Inspector of Police, Secretariat Colony Police Station, Chennai.
6.The Public Prosecutor, High Court, Madras.

7. The II Metropolitan Magistrate, Egmore, Chennai-8

8. -do- through the Chief Metropolitan Magistrate, Egmore, Chennai.

9. The Superintendent, Central Prison, Madurai.

One cc to Mr.A.Arasu Ganesan, Advocate SR.5092.

Crl.A.No.778 of 1996

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